

AUG 24 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANUEL FERNANDEZ FERNANDEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-77140

Agency No. A97-102-168

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 21, 2006**

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Manuel Fernandez Fernandez, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals affirming an immigration judge's decision denying Fernandez's application for cancellation of removal

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C.

§ 1229b(b).

We lack jurisdiction to entertain the petition for review because the Board's affirmance was based on the unreviewable discretionary determination that Fernandez failed to establish that his removal would result in "exceptional and extremely unusual hardship" to his qualifying relatives. 8 U.S.C.

§ 1252(a)(2)(B)(i); *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005). Fernandez's contention – that the Board abused its discretion "by not confronting the argument that the IJ's impermissible finding of lack of physical presence and lack of good moral character infected the discretionary analysis in terms of hardship" – does not overcome the jurisdictional bar because the Board did not reach either the physical presence or the good moral character requirements and made its decision, after review of the "entirety of the record," solely on the independent and unreviewable ground that Fernandez failed to show the requisite hardship. *See* 8 U.S.C. § 1229b(b)(1) (setting forth the requirements for cancellation of removal in the conjunctive).

PETITION FOR REVIEW DISMISSED.